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No. 959 61

In the Supreme Court of the United States

OCTOBER TERM, 1945

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

SEATRAIN LINES, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the District of Delaware

Civil Action No. 579

SEATRAIN LINES, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

and

INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

JURISDICTIONAL STATEMENT BY DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

(Filed February 27, 1946)

The defendants-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. *Statutory provisions*

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended

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by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C. Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804, February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. *The statute of a state, or the statutes or treaty of the United States, the validity of which is involved*

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved, except that the lower court held that there was nothing in a statute of the United States, namely, the Interstate Commerce Act, empowering the entire Interstate Commerce Commission to modify the terms and conditions of a certificate

previously granted by its Division 4, to Seatrain Lines, Inc., a common carrier by water.

C. *Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented*

The decree sought to be reviewed was entered on February 7, 1946. The petition for appeal was presented and allowed on February 27, 1946, together with the assignment of errors.

D. *Nature of case and of rulings below*

This is an appeal from a final decree of the United States District Court for the District of Delaware, entered February 7, 1946, setting aside a certificate of the Interstate Commerce Commission, dated February 6, 1945, in Docket No. W-543, *Seatrain Lines, Inc., Common Carrier Application,* 260 I. C. C. 430, wherein the Commission modified findings in a prior report of its division 4, dated July 2, 1942. The entire Commission found that Seatrain Lines was entitled to continue operation as a common carrier by water, in interstate or foreign commerce, by self-propelled vessels, in the transportation of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer, between the ports of New York, N. Y., New Orleans, La., and Texas City, Texas, by way of the Atlantic Ocean and the Gulf of

Mexico. The essential difference between the Commission and Division 4 was that the former confined Seatrain's operations to the kind of operations it was engaged in at the time of the "grandfather" clause of the Water Carrier Act, January 1, 1940, namely the peculiar "Seatrain" type of operation, whereas under the Division's certificate Seatrain could handle commodities generally, in bulk or otherwise, like the ordinary "break-bulk" type of vessel.

By applications filed on May 29, 1941, Seatrain sought a certificate of public convenience and necessity under the "grandfather" clause of Part III of the Interstate Commerce Act, section 309 (a), authorizing continuance of operation as a common carrier by water, in interstate or foreign commerce, in the transportation of commodities generally and passengers between New York and New Orleans, La., via the Atlantic Ocean and the Gulf of Mexico; and it also sought a certificate under section 309 (a) and (c) authorizing continuance of an operation (termed an "interim" operation) instituted between January 1, 1940 (the critical date under the "grandfather" clause) and February 1, 1941 (the date section 309 took effect), as a common carrier by water, in interstate or foreign commerce in the transportation of commodities generally between New York and Texas City, Texas, by way of the Atlantic Ocean and the Gulf of Mexico. The two applications

were consolidated for action, and disposed of in one report.

In its application under the "grandfather" clause, Seatrain described its operation as a "regular weekly service (inaugurated in 1932) in each direction between the Port of New York and the Port of New Orleans, via Havana, Cuba, or direct"; it also advised that Seatrain has continued "to operate as above stated." Attached to the application was an affidavit of its official, E. K. Morse, dated May 28, 1941, in which he asked the Commission to refer to its findings in prior cases involving Seatrain. Seatrain's operations have been a rather prolific source of litigation before the Commission and in the courts[1] and the Com-

[1] *Investigation of Seatrain Lines*, Docket No. 25565, with which was also heard a proceeding on the *Application of the Missouri Pacific Railroad Company and Texas and Pacific Railway Company under Paragraphs 9, 10 and 11 of Section 5 of the Interstate Commerce Act*, Docket No. 25546. The Commission made and published two reports, 195 I. C. C. 215 (1933); 206 I. C. C. 328 (1935).

Seatrain Lines, Inc. v. *The Akron, Canton & Youngstown Railway Company et al.*, Docket No. 25727, in which and in a related case, I. & S. Docket No. 4542, the Commission made three reports, 226 I. C. C. 7 (1938); 243 I. C. C. 199 (1940); 259 I. C. C. 297 (1944).

Hoboken Manufacturers Railroad Company v. *The Akron, Canton & Youngstown Railway Company et al.*, Docket No. 27630. The Commission's report in this proceeding is published in 234 I. C. C. 114 (1939).

Hoboken Manufacturers Railroad Company v. *Abilene & Southern Railway Company et al.*, Docket No. 25728. The Commission made four reports, 206 I. C. C. 328 (1935);

mission was quite familiar with the unique character of Seatrain.

Seatrain's application as an "interim" operator between New York and Texas City, Texas, contained substantially the same information, except that its revenue condition was discussed more fully.

An examiner of the Commission conducted a field examination concerning Seatrain's operations and recommended that its "interim" application be granted.

Without further proceedings, Division 4 of the Commission, consisting of three members, issued its report wherein the Division found:

> We find that Seatrain Lines, Inc., was in bona fide operation on January 1, 1940, as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York and New Orleans, by way of the Atlantic Ocean and the Gulf of Mexico; and that such operation has been continued since that date, except for an interruption of service over which applicant had no control.
>
> We further find that the present and future public convenience and necessity re-

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226 I. C. C. 7 (1938); 237 I. C. C. 97 (1940); 248 I. C. C. 109 (1941).

See also *Int. Com. Comm.* v. *Hoboken Mfrs. R. R. Co.*, 320 U. S. 368; *United States* v. *Penna. R. R. Co. et al.*, 323 U. S. 612.

quire operation by applicant as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York and Texas City, by way of the same route; and that applicant is fit, willing, and able to continue the operation.

We further find that applicant is entitled to a certificate authorizing such operations, subject, however, to general conditions which are necessary to carry out, with respect to continuance of applicant's operations, the requirements of part III of the act and the orders, rules, and regulations of the Commission thereunder. For the reasons given above, that portion of the application seeking authority to transport passengers between New York and New Orleans will be denied.

A certificate was issued, to become effective on August 10, 1942.

About 18 months later, on December 18, 1943, the Commission on its own motion, reopened the case for reconsideration, and by another order, dated January 27, 1944, it was provided:

It is ordered, That the said proceeding be, and it is hereby reopened for hearing upon the question of whether or not the said findings and certificate and order of July 2, 1942, should be modified so as to authorize applicant to continue to operate in service in which it was engaged, except for interruptions beyond its control,

namely, as a common carrier by the "Seatrain" type of vessels in the transportation of liquid cargoes in bulk; of empty railroad cars, and of property loaded in freight cars received from and delivered to rail carriers and transported without transfer from the freight cars between the ports above mentioned.

And it is further ordered, That this proceeding be, and it is hereby assigned for hearing at the offices of the Commission in Washington, D. C., at 9:30 A. M. on February 28, 1944, before Examiner Porter and Examiner Copenhafer.

A motion for vacation and rescission of the reopening order was filed by Seatrain on March 24, 1944, and renewed at a hearing held March 27, 1944. At that hearing Mr. McCollester, counsel for Seatrain, stated:

> I am directed by my client to inform the Commission that until our motion is passed upon, and if the Commission wishes argument on it we are, of course, prepared to argue it more fully; but until our motion is acted upon, we are not prepared to go forward with any evidence.
>
> Commr. PORTER. Well, I will overrule the motion. Of course, you know without my advising you at all, you have of course a perfect right of appeal to the entire Commission, but at the same time I will overrule the motion.

The motion for vacation of the reopening order was presented to the entire Commission and de-

nied on April 3, 1944, "without prejudice to its renewal at the conclusion of the hearing to be held pursuant to said order of reopening," and, following the filing of petitions for intervention, which were granted, by the Ocean Steamship Company of Savannah, Agwilines, Inc., Eastern Steamship Company and the Bull Steamship Lines, the matter came on for further hearing before Commissioner Porter on April 24, 1944.

At this rehearing, Mr. McCollester said:

> Mr. McCollester. Mr. Commissioner, we have no evidence to offer. Our application was filed, the supporting data was presented in support of the two applications.
>
> The certificates have been issued and have been in effect for a year and half or more, and therefore, we do not conceive that there is any question of fact that can now be before the Commission in regard to them, and, consequently, we have no evidence.

After this declination to produce evidence Commissioner Porter referred in some detail to the record the Commission would have before it in determining the issues. Whereupon counsel for applicants stated:

> Mr. McCollester. I thank Your Honor for bringing those matters to our attention. If I correctly understand, all of the material to which Your Honor has referred, is material which was presented in con-

nection with the applications considered by the Commission in issuing its order of July 2, 1942, which contains certificate and was the material upon which that certificate was based.

If that clearly appears, of course, we, ourselves, would want that. We want to have that clearly understood. The only objection we would have to the consideration by the Commission at this time, or the receipt for purposes of consideration of any evidence or material of any sort in the nature of factual information which was not before the Commission and was not considered by it in issuing the certificate.

Commr. PORTER. Well, Counsel understands of course that the reports of the Commission to which I have referred and identified in the record here, were all matters of our records and were before us at the time, and were available to us at the time we issued the certificates.

Mr. MCCOLLESTER. That is right.

The entire Commission on May 8, 1944, by order, affirmed its earlier action overruling Seatrain's application to dismiss the proceedings for lack of jurisdiction in the Commission to proceed. The case was fully argued before the entire Commission on July 21, 1944, and counsel for applicant stated his position as follows:

Commr. PORTER. Well, your point briefly is that this Commission when it once issues a certificate that that ends it and that it

loses its power to change, alter, or modify it in any respect whatsoever? Isn't that your motion?

Mr. McCollester. Yes, Mr. Commissioner, if there is no fraud or misrepresentation and if there is full disclosure of the facts and if action has been taken by the applicant in reliance upon the rights granted.

* * * * *

I would say this, that the certificates which have been issued, if there was no fraud or misrepresentation or failure of full disclosure in the applications for the certificates, if they have become effective you cannot now revoke any of the rights, and they are entitled to all of the rights which would accrue under the language of the certificate.

Commr. Porter. Forever and a day.

Mr. McCollester. Forever and a day, so long as they do not abandon. If they abandon that is another matter. It seems to be pretty well established by the decisions of the court that in the event of abandonment a certificate may be cancelled.

On February 6, 1945, the Commission decided the case, three Commissioners dissenting (one as a matter of policy rather than lack of legal authority in the Commission to do what it did) and one Commissioner not participating. This report (260 I. C. C. 430) is attached to the petition as plaintiff's Exhibit B.

In this report the Commission pointed out that the purpose of the "grandfather clause" of Part III was to assure to applicants a "substantial parity" between future operations and prior *bona fide* operations; that under this clause Seatrain was

> engaged on January 1, 1940, and continuously since, except for interruptions beyond its control, in the transportation by water, by self-propelled vessels, in interstate or foreign commerce, of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer from railroad cars, between the ports of New York and New Orleans by way of the Atlantic Ocean and the Gulf of Mexico.

With respect to its "public convenience and necessity" application covering operations between New York and Texas City, the Commission found:

> Applicant is fit, willing, and able to continue operations instituted after January 1, 1940, between New York and Texas City, in the transportation by water, by self-propelled vessels, in interstate or foreign commerce, of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer from railroad cars, which

operations are required by public convenience and necessity.

The report of the Commission contains a full discussion as to its authority to modify or correct a certificate inadvertently conferring greater rights than subsequently found an applicant should receive. It pointed out that when Division 4 authorized the issuance of a certificate on July 2, 1942, that the certificate provided that it was subject "to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority by this Commission." It cited section 309 (d) of Part III of the Act, which provides:

> Such certificate shall specify the route or routes over which, or the ports to and from which, such carrier is authorized to operate, and, at the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by such certificate such reasonable terms, conditions, and limitations, as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such other terms, and conditions, and limitations as are necessary to carry out, with respect to the operations of the carrier, the requirements of this part of those established by the Commission pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall re-

> strict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require, or the right of the carrier to extend its services over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates, as soon as such uncompleted portions are open for navigation.

It relied too on section 315 of Part III, which provides in part as follows:

> (c) The Commission may suspend, modify, or set aside its orders under this part upon such notice and in such manner as it shall deem proper.
>
> (d) Except as otherwise provided in this part, all orders of the Commission other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended, modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

Based on these provisions and after discussing various decisions of the Commission and this court, the Commission concluded it had the au-

thority to modify the prior certificate in order to confine Seatrain to what it was actually doing.

In answer to the claim that considerable commitments and expenditures had been made by applicant on the strength of the certificate issued by Division 4, the Commission reviewed these claims, and found that, despite the fact that the proceeding was set twice for hearing, the applicant failed to introduce any evidence; therefore it concluded "The record therefore contains no specific showing in that respect". On February 6, 1945, the issuance of a corrected certificate to conform to the new findings of the Commission was authorized. The order of the Commission thereunder has never become effective, having been voluntarily postponed by the Commission from time to time at the request of the court to afford it an opportunity to pass on the issues involved, and finally, on February 7, 1946, having been permanently enjoined by the court.

The petition to set aside the Commission's report of February 6, 1945, was filed in the District Court on May 12, 1945. Broadly speaking, the petition alleged that the Commission had no authority to change the certificate once it had been issued; that the authority conferred by section 315 (c) to impose terms and conditions after the issuance of the certificate did not authorize the Commission to change a certificate in the material manner it sought to do here, and that to hold otherwise would deprive plaintiff of its

property without due process of law in violation of the Fifth Amendment. No specifications concerning the allegation of confiscation were set out except in the most general of terms. (Paragraph 50 of petition.) The case was orally argued before the three-judge court on July 20, 1945, and at that hearing, over the objections of defendants, plaintiff was permitted to introduce evidence *de novo* in court in support of its claim that it had made large expenditures of money on the strength of the original certificate, evidence which it had not sought to present to the Commision, although afforded two opportunities to do so. On January 30, 1946, the District Court rendered its decision sustaining plaintiff's contentions and permitting the new evidence to be presented to it. On the strength of this evidence, which had not been presented to the Commission, the court found that expenditures had in fact been made. Also, the court held that the Commission had no authority to alter the terms of a certificate once issued. Findings of fact and conclusions of law were entered by the court on the same day, and a final decree was entered on February 7, 1946.

The questions presented by this appeal are substantial. The important question concerns the authority of the Commission to change a water carrier certificate inadvertently issued by a Division or whether such a certificate is good, as applicant contended to the Commission, in the absence of misrepresentation, fraud, etc., "forever

and a day". Also presented is the question whether a party can decline to present evidence to the Commission, and then, on the most general of confiscation charges, be permitted to introduce evidence *de novo* in court, and largely on the strength of that new evidence, succeed in annulling an order of the Commission. The Commission indicated in its report of February 6, 1945, that the authority it asserted here would be "sparingly exercised" (260 I. C. C. at p. 441). If plaintiff had in fact presented to the Commission evidence as to large expenditures on the strength of the original certificate, evidence which it twice declined to present to the Commission at formal hearings called for that purpose among others, such evidence might have changed the conclusion of the Commission to modify the certificate, in view of its statement (260 I. C. C. at p. 441) that it would avoid adversely affecting vested interests. No supported showing of vested interests had been presented to it. The Water Carrier Act, Part III of the Interstate Commerce Act, was approved on September 18, 1940, and due largely to the war, many vessels, including Seatrain's, had been devoted to war purposes rather than commercial handling of freight. With the cessation of hostilities, the principal question in this case has attained further importance. It is essential that in the early days of regulation of water carriers the Commission

be advised by a determination of the Supreme Court just what authority Congress has conferred upon it to modify a water carrier certificate. Also, we submit that the District Court interfered with the administrative process by permitting plaintiff to test an order of the Commission in court on a different record from that on which the order was made.

E. *Cases sustaining the Supreme Court's jurisdiction of the appeal*

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499;

United States v. *Baltimore & Ohio Railroad Company*, 293 U. S. 454;

Florida v. *United States*, 282 U. S. 194;

Beaumont, Sour Lake & Western Railway Company v. *United States*, 282 U. S. 74;

Ann Arbor Railroad Company v. *United States*, 281 U. S. 658;

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1;

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541;

United States v. *Pennsylvania R. R. Co.*, 323 U. S. 612;

Acker v. *United States*, 298 U. S. 426;

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420;

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541;

New England Divisions Case, 261 U. S. 184;
Alton R. Co. v. *United States,* 287 U. S. 229;
United States v. *Lowden,* 308 U. S. 225;
Hudson & Manhattan R. Co. v. *United States,* 313 U. S. 98; and
Interstate Commerce Commission v. *Hoboken Manufacturers' Railroad Co.,* 320 U. S. 368.

F. *Opinion and Decree of the District Court*

Appended to this statement are: (1) copies of the opinion, findings of fact and conclusions of law of the District Court dated January 30, 1946, and (2) copies of the final decree of said court sought to be reviewed, dated February 7, 1946.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated February 27, 1946.

F. HOWARD MCGRATH,
Solicitor General,
J. J. MORRIS, JR.,
United States Attorney,
WENDELL BERGE,
Assistant Attorney General,
EDWARD DUMBAULD,
Special Assistant to the Attorney General,
For the United States of America.
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E. M. REIDY,
Assistant Chief Counsel,
For the Interstate Commerce Commission.

In the District Court of the United States for the District of Delaware

CIVIL ACTION No. 579

SEATRAIN LINES, INC., PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

OPINION

Before BIGGS and MCLAUGHLIN, Circuit Judges, and LEAHY, District Judge.

By BIGGS, *Circuit Judge*.

The suit at bar presents vexatious problems. The plaintiff is Seatrain Lines, Inc., whose operations have been the subject of discussion and decisions by the courts[2] and by the Interstate Commerce Commission[3] on numerous occasions. Reference is made to these decisions for general and particular descriptions of Seatrain's business. Since October 1932 Seatrain has operated as a common carrier in the transportation of

[2] See *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, 613, and *I. C. C.* v. *Hoboken R. Co.*, 320 U. S. 368, 371–372; *Pennsylvania R. Co.* v. *United States*, 55 F. Supp. 473, 476–477, and *Hoboken Mfrs. R. Co.* v. *United States*, 47 F. Supp. 779, 781.

[3] See investigation of *Seatrain Lines, Inc.*, 195 I. C. C. 215, 206 I. C. C. 328; *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199; *Hoboken Mfrs. R. Co.* v. *Akron C. & Y. Ry. Co.*, 234 I. C. C. 114; *Hoboken Mfrs. R. Co.* v. *Abilene & S. Ry. Co.*, 237 I. C. C. 97, 248 I. C. C. 109; *Missouri Pac. R. Co. and T. & P. Ry. Co., Service by Water*, 245 I. C. C. 143.

property by water. Seatrain ships carry standard gauge railroad tracks and are so designed that loaded freight cars may be lifted to or from the vessels by a cradle device. Commodities may thus be transported in freight cars from shore to ship and from ship to shore without breaking bulk. The cost of loading and unloading freight at the ports is thus reduced substantially. Prior to the war Seatrain took delivery of freight cars from the trunk line railroads at the Port of New York and delivered the cars to trunk line railroads at Belle Chasse, the Port of New Orleans. Seatrain also delivered liquid cargoes in bulk and transported commodities generally. A comparatively small part of the commodities shipped originated at Seatrain's own terminals. Most of the commodities transported were carried in railroad cars put on board the vessels by the peculiar Seatrain devices.[1]

In May 1940, Seatrain inaugurated substantially similar service between the port of New York and Texas City, Texas.

On May 28, 1940, Seatrain filed two applications with the Interstate Commerce Commission for certificates of convenience and necessity as a common carrier of commodities generally between New York and New Orleans and New York and Texas City, respectively. The "grandfather date" appli-

[1] Seatrain also had accommodations for two passengers on each vessel. We are not presently concerned, however, with this service.

cable to water carriers is January 1, 1940. See Section 309 (a), Part III, Interstate Commerce Act, 49 U. S. C. A. § 909 (a). One of Seatrain's two applications to the Commission was for a certificate as a common carrier of commodities generally between New York and New Orleans under the "grandfather" clause. Its second application was for a certificate for its New York and Texas City service as a common carrier of commodities generally, without benefit of the grandfather clause, pursuant to Section 309 (a) and (c). Notice of these applications was given by the ICC to certain competing steamship lines, common carriers of commodities generally. On July 2, 1942 the ICC by Division 4 filed a decision [5] granting Seatrain a single certificate as a common carrier by self-propelled vessels of commodities generally between New York and New Orleans and between New York and Texas City. The certificate contained a clause in the usual form stating that the carrier was authorized to perform the service specified subject "* * * to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority by this Commission." The Division laid emphasis in its opinion on the peculiar value of the Seatrain service in that shipments were made in carload lots without breaking bulk and loading and unloading the cars at the ports.

[5] Not reported for publication.

The certificate was ordered to take effect from and after August 10, 1942. Seatrain asserts and has proved, as will hereinafter appear, that acting upon the authority granted by the certificate it has made substantial expenditures and important commitments for the future.[6]

On December 18, 1943, however, Division 4 ordered reconsideration of Seatrain's applications and of the applications for certificates of the Foss Launch & Tug Co. See 260 I. C. C. 103. The division thereafter amended the certificate first issued to the Foss Company on August 26, 1942. The certificate originally issued by the Commission to the Foss Company authorized it to transport commodities generally. The amended certificate issued to the Foss Company eliminated the company's authority to "transport freight cars, loaded or empty, in the performance of a freight-car-ferry service." The course pursued by Division 4, and hence by the Commission, in respect to the Foss company had repercussions on the Sea-

[6] See the opinion of the Commission in the case at bar, 260 I. C. C. 430. Commissioner Porter stated in this opinion, p. 442 "Applicant asserts that pursuant to, and in reliance upon, the certificate it made plans to reenter the coastwise trade and has incurred substantial expense and made important commitments for the future. * * *" See also the testimony of Graham M. Brush, president of Seatrain, at the hearing before this court.

Seatrain's services were terminated by the war, its vessels being requisitioned by the United States. It has planned to recreate and extend its services as indicated.

train certificate. See also the decision of the Commission in Newtex S. S. Corporation Common Carrier Application, 260 I. C. C. 418. On February 6, 1945, having granted Seatrain an opportunity for the presentation of evidence of which Seatrain did not avail itself and after certain intermediate steps which need not be recited here, the full Commission, one member only being absent, over the protests of Seatrain in respect to the Commission's jurisdiction, ordered Seatrain's original certificate cancelled and a new certificate issued in lieu thereof.

The new certificate limited Seatrain to the service of "a common carrier by self-propelled vessels * * * in the transportation of liquid cargoes in bulk; of empty railroad cars; and of property loaded in freight cars received from and delivered to rail carriers and transported without transfer from railroad cars between the Ports" of New York and New Orleans on the one hand and New York and Texas City on the other. Mr. Brush, the president of Seatrain, testified before this court that the limitations placed upon Seatrain's service by this amendment to its certificate will substantially impair the business of Seatrain, will render useless the expenditures and commitments heretofore made by Seatrain and will result in serious losses to the company.

[7] Cf. the decision of the Commission in Newtex S. S. Corporation Common Carrier Application, 260 I. C. C. 418.

Seatrain has petitioned this court[8] to set aside the order of the Commission entered February 6, 1945 and the corrected certificate of public convenience and necessity embodied in that order.

The Commission was not unanimous in the views expressed in its opinion of February 6, 1945.[9] One Commissioner concurred in a separate opinion and three Commissioners dissented in separate opinions. The Commissioners who joined in the majority opinion and the concurring Commissioner took the position that in granting the original certificate to Seatrain authorizing it to transport commodities generally the Division had committed an inadvertent error or a mistake which should be corrected by the amended certificate. The dissenting Commissioners took the view that the action of Division 4 in granting the original certificate to Seatrain was not the result of inadvertence or a mistake but represented the studied policy of the Commission until the reopening of, and the issuance of the amended certificate in, the Foss case. One Commissioner was of the opinion that when a certificate of convenience and necessity has been issued to a common carrier by water that certificate is a franchise and may not be revoked.[10]

[8] Pursuant to the provisions of the Commerce Court Act and the Urgent Deficiencies Act as reenacted. See 28 U. S. C. A. § 41 (28) and §§ 43 to 48, inclusive.

[9] See 260 I. C. C. 430.

[10] No other member of the Commission took this view. All the other members rejected it either expressly or implicitly.

The principal issue which we must decide is the authority of the Commission to alter drastically its original certificate. The original certificate permitted the petitioner, as we have stated, to engage in the transportation of commodities generally as a common carrier by water. The amended certificate limiting transportation to property loaded in freight cars received from and delivered to rail carriers without transfer, in effect reduces Seatrain to the status of a car-ferry. It may not initiate or terminate traffic; it may not deliver freight to a truck or any receiver other than a railroad. Such a change in status scarcely can be considered to lie within the permissible rights reserved in the former certificate to change "terms, conditions and limitations * * * attached to the exercise" of the authority. This clause is based on the provisions of Section 309 (d) of the Act, 49 U. S. C. A. § 909 (d), but the "terms, conditions, and limitations" contemplated by Congress were of the kind that were before the Supreme Court in *Crescent Express Lines, Inc.* v. *United States*, 320 U. S. 401 and in *Noble* v. *United States*, 319 U. S. 88. The terms or conditions or limitations which may be imposed by the Commission under the authority of the section cited cannot sanction the radical step which the Commission has taken of transmuting a common carrier by water of commodities generally into a car-ferry.

There is no statutory authority for the revocation or alteration of a certificate. The Commission relies on Sections 17 (7) and 315 (c) of the Act, 49 U. S. C. A. §§ 17 (7) and 915 (c). The first subsection referred to is from Part I of the Act relating by reference to common carriers by water. That subsection makes determinations by the Commission subject to rehearing and reconsideration, and provides that the Commission or a division of the Commission may change or modify any decision, order or requirement made by a division. Subsection (c) of Section 315 provides that "The Commission may suspend, modify, or set aside its orders under this part upon such notice and in such manner as it shall deem proper." The provision last quoted is intended to apply to regulatory orders of the Commission and not to permit the cancellation of orders authorizing the issuance of certificates of public convenience and necessity. It is our opinion that these statutory provisions do not aid the standing of the Commission's order of February 6, 1945.

Section 212 (a), Part II of the Act, 49 U. S. C. A. § 312 (a), dealing with Motor Carriers, provides a method whereby a certificate issued to a motor carrier may be suspended or terminated by the Commission. We think it must be conceded that insofar as the termination or revocation of a certificate issued to a motor carrier under Part II

of the Act is concerned, the power of the Commission to terminate or revoke is created and defined in Section 212 (a); that if the Commission does not act under that section it is without power to terminate or revoke the certificate of a motor carrier. The Commission has so held. Smith Bros., Revocation of Certificate, 33 M. C. C. 465. Part III of the Act contains no similar provisions. The Commission itself prior to the enactment of the Transportation Act of 1940, 54 Stat. 898, called this very fact to the attention of Congress. Commissioner Eastman, Chairman of the Commission's Legislative Committee, reporting to the Senate Committee on Interstate and Foreign Commerce and the House Committee on Interstate and Foreign Commerce on S. 2009 on January 29, 1940, stated, "This bill leaves section 212 (a) unchanged and has no corresponding provision in the new part III. While there is room for argument we are inclined to believe that provision for the revocation or suspension of water carrier certificates is not essential if adequate penalty provisions are provided for violation of part III. Revocation or suspension, in the case of motor carriers, is believed to be the most effective means of enforcement since there are so many such carriers and the operations of the great majority are so small, that enforcement through penal actions

in courts presents many practical difficulties, but this is not true of water carriers." [11]

Congress did not include in Part III any express power to change, amend or revoke a certificate held by a carrier by water. We agree with Commissioner Lee that the conclusion seems inescapable that Congress did not intend to confer upon the Commission power to revoke a certificate of public convenience and necessity issued to a common carrier by water. Whether the certificate when issued be called a "franchise" or not seems relatively unimportant.[12] Whatever be its proper name, it is a creature of the statute. Under the particular circumstances presented here, once the certificate was given it may not be revoked, can-

[11] Letter from the Chairman of the Legislative Committee, Interstate Commerce Commission, transmitting to the Chairman of the Senate Interstate Commerce Committee and the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives a report relative to omnibus transportation legislation, S. 2009, as passed by both houses of Congress, dated January 29, 1940; House Committee print, United States Government Printing Office, Washington, 1940.

The same document is cited in note 5 to the decision in *Ziffrin, Inc.* v. *United States*, 318 U. S. 73, 77.

[12] If the certificate be deemed a franchise, since it grants rights to engage in business of a public nature, the grant which it contains is protected by the Fifth Amendment to the Constitution. Unless the right be reserved, the grant may not subsequently be impaired. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Owensboro* v. *Cumberland Telephone Co.*, 230 U. S. 58. The inviolability of the certificate is clear whether it be considered a purely statutory creation or to be of the nature of a franchise.

celled or limited in any substantial fashion. The statute confers no such power on the Commission and, as we have stated, the Commission's powers are purely statutory.[13]

It is clear that the Commission may not amend the certificate by changing its essential grant as in the case at bar. It is agreed that there was no fraud in the procurement of the certificate.[14] The Commission asserts, however, that the original grant was made through inadvertence and that it has the right to correct such errors. There is no authority for such remedial action. If the Commission may correct inadvertent errors its power to do so much be deemed to lie in the general authority conferred upon any quasi-judicial or administrative body. Assuming an analogy to the remedial powers of courts to be persuasive, after the end of the term at which the judgment was rendered a court could not reopen the record to correct other than clerical errors except by recourse under unusual circumstances to the ancient writ of *coram nobis*.[15] The mistake of the Commission made by its Division 4 was certainly not

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[13] *United States* v. *Pennsylvania R. Co.*, 242 U. S. 208; *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 167 U. S. 479.

[14] Cf. *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 238.

[15] Cf. *United States* v. *Steese*, 144 F. 2d 439. See Rule 60 (b) of the Federal Rules of Civil Procedure, 28 U. S. C. A. foll. § 723c permitting corrections of errors due to the litigant's inadvertence.

clerical and the common law writ is not available to the Commission. Even if it were there are no circumstances in the case at bar which would warrant its application by analogy.

Although the Commission terms the issuance of the original certificate as an instance of inadvertent error, it appears to have resulted from the considered judgment of Division 4 and, therefore, of the Commission. While the petitioner's references to the Foss and the Newtex cases are helpful perhaps in forming a basis to conjecture the Commission's trend of policy, it is unnecessary and indeed improper to attempt to ascertain the mental processes of the Commissioners at the time of the issuance of the original order and certificate. The Supreme Court in the recent case of *Mine Workers* v. *Eagle Picher Co.*, 325 U. S. 335 addressed itself to the problem of the correction by an administrative body of its own error. In the cited case the National Labor Relations Board had applied to the Circuit Court of Appeals for the Eighth Circuit for the enforcement of a back pay order and had stated incorrectly the method for computation of the back pay, resulting in a drastic curtailment of pay admittedly owed the employees. The Circuit Court had adopted the Board's method of computation and had approved it in its decree. The company was not prejudiced by this order. Nevertheless, the Supreme Court refused to permit the correction of the patent error. In discussing the question of inadvertence

Mr. Justice Roberts speaking for the Court cogently declared, *id.* p. 341, "Administrative flexibility and judicial certainty are not contradictory; there must be an end to disputes which arise between administrative bodies and those over whom they have jurisdiction. This does not mean that the Board could not frame an order which by its terms required modification should conditions change. But here the order was definite and complete; * * * The conditions remained the same; what changed was the Board's awareness of them." In the case at bar the Commission has not applied to the courts. However, we believe that the reasoning of the Supreme Court is applicable by analogy to final administrative orders including the order of the Commission granting the original certificate.

The testimony introduced by the petitioner showing its expenditure of funds and its large commitments in reliance upon the original certificate will not be stricken from the record. The petitioner has alleged that the Commission's order will deprive it "* * * of property and take its property for public use without just compensation and without due process of law in violation of the Fifth Amendment * * *". The evidence referred to is pertinent to the question, one of mixed

law and fact, raised by the petitioner. The testimony objected to supports the conclusion that the petitioner will be deprived of property without compensation and without due process of law if the order of the Commission shall become effective. See *B. & O. R. Co.* v. *United States,* 298 U. S. 349, 368–9, and *United States* v. *Idaho,* 298 U. S. 105, 108–9. See also Commissioner Porter's statement, note 5 *supra.*

The Commission has made the argument that the original certificate was too limited in that it did not give Seatrain the right to transport empty freight cars. Therefore, the second certificate, it reasons, is in reality broader than the first. We reject this contention. If the first certificate does not authorize Seatrain to transport empty freight cars, that question may be tested in so appropriate manner. The phraseology of th rtificate cannot serve, of course, to impair Seatrain's rights under the grandfather clause in respect to the New York-Belle Chasse route. *United States v. Maher,* 307 U. S. 148; *Quaker City Bus Co.,* 38 M. C. C. 603.

The order of the Commission will be set aside.

Findings of fact and conclusions of law are filed with this opinion.

(January 30, 1946.)

In the District Court of the United States for the District of Delaware

CIVIL ACTION No. 579

SEATRAIN LINES, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

FINDINGS OF FACT

1. The petitioner, Seatrain Lines, Inc., filed seasonably with the Commission two separate applications: (1) an application for a certificate covering petitioner's New York-New Orleans operation, based on "grandfather" rights; and (2) a separate application, based not on grandfather rights, but on a showing of public convenience and necessity, for Seatrain's proposed New York-Texas City operation.

2. Division 4 of the Commission consisting of three members, issued its report, dated July 2, 1942, wherein the Division found:

> We find that Seatrain Lines, Inc. was in bona fide operation on January 1, 1940, as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York and New Orleans, by way of the Atlantic Ocean and the Gulf of Mexico; and that such operation has been continued since that date, except for an interruption of service over which applicant had no control.

We further find that the present and future public convenience and necessity require operation by applicant as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York and Texas City, by way of the same route; and that applicant is fit, willing, and able to continue the operation.

We further find that applicant is entitled to a certificate authorizing such operations, subject, however, to general conditions which are necessary to carry out, with respect to continuance of applicant's operations, the requirements of part III of the act and the orders, rules, and regulations of the Commission thereunder. For the reasons given above, that portion of the application seeking authority to transport passengers between New York and New Orleans will be denied.

A certificate issued to become effective on August 10, 1942, the body of which reads as follows:

Seatrain Lines, Inc. having filed applications under the provisions of section 309 (a) and (c) of the Interstate Commerce Act for a certificate of public convenience and necessity authorizing continuance of its operations as a common carrier by water, a full investigation of the matters and things involved having been made, and said division on the date hereof, having made and filed a report containing its findings of fact and

conclusions thereon, which said report is hereby referred to and made a part hereof;

It is hereby certified, That public convenience and necessity require the continuance of operations by Seatrain Lines, Inc., as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York, N. Y., New Orleans, La., and Texas City, Tex., by way of the Atlantic Ocean and the Gulf of Mexico.

It is ordered, That said carrier be, and it is hereby, authorized to perform the service specified above, subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority by this Commission.

It is further ordered, That the holding of this certificate by said carrier be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the Interstate Commerce Act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That the portion of the application seeking authority to transport passengers between New York and New Orleans be, and it is hereby, denied.

And it is further ordered, That this certificate and order shall take effect and be in force from and after August 10, 1942.

By the Commission, division 4.

3. About 18 months later, on December 18, 1943, the Commission, on its own motion, reopened the case for reconsideration, and by another order, dated January 27, 1944, it was provided:

It is ordered, That the said proceeding be, and it is hereby reopened for hearing upon the question of whether or not the said findings and certificate and order of July 2, 1942 should be modified so as to authorize applicant to continue to operate in service in which it was engaged, except for interruptions beyond its control, namely, as a common carrier by the "Seatrain" type of vessels in the transportation of liquid cargoes in bulk; of empty railroad cars, and of property loaded in freight cars received from and delivered to rail carriers and transported without transfer from the freight cars between the ports above mentioned.

And it is further ordered, That this proceeding be, and it is hereby assigned for hearing at the offices of the Commission in Washington, D. C., at 9:30 A. M. on February 28, 1944, before Commissioner Porter and Examiner Copenhafer.

4. A motion for vacation or rescission of the reopening order was filed by Seatrain on March 24, 1944, and renewed at the hearing of March 27, 1944.

5. No evidence was introduced at the March 27, 1944 hearing for the reasons stated but the motion for vacation of the reopening order was presented to the entire Commission and denied on April 3, 1944, "without prejudice to its renewal at the conclusion of the hearing to be held pursuant to said order of reopening."

6. Following the filing of petitions for intervention, which were granted, by the Ocean Steamship Company of Savannah, Agwilines, Inc., Eastern Steamship Company and the Bull Steamship Lines, the matter came on for further hearing before Commissioner Porter on April 24, 1944. Seatrain offered no evidence.

7. The entire Commission on May 8, 1944, by order, affirmed its earlier action overruling Seatrain's application to dismiss the proceedings for lack of jurisdiction in the Commission to proceed. The case was fully argued before the entire Commission on July 21, 1944.

8. On February 6, 1945, the Commission decided the case, three Commissioners dissenting, one concurring, and one Commissioner not participating. In its report the Commission made the following findings and conclusions.

> Upon reconsideration and hearing we find that the following facts among others have been established:
>
> 1. Applicant was engaged on and since January 1, 1940, except for interruptions beyond its control, in the operation of self-

propelled vessels designed for the transportation of (1) property when loaded in railroad cars, (2) empty railroad cars, and (3) liquid cargoes in bulk.

2. Applicant's vessels have all been taken over by the United States Maritime Commission and applicant is not now in operation and had not operated for several months prior to the date on which the certificate was issued by division 4.

3. Applicant was engaged on January 1, 1940, and continuously since, except for interruptions beyond its control, in the transportation by water, by self-propelled vessels, in interstate or foreign commerce, of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer from railroad cars, between the ports of New York and New Orleans by way of the Atlantic Ocean and the Gulf of Mexico.

4. Applicant is fit, willing, and able to continue operations instituted after January 1, 1940, between New York and Texas City, in the transportation by water, by self-propelled vessels, in interstate or foreign commerce, of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer from railroad cars, which operations are required by public convenience and necessity.

5. Applicant seasonably filed applications for authority to continue the operations described in paragraphs 3 and 4.

6. Applicant has not engaged in transportation of property in so-called "break-bulk" service, but has confined its operations exclusively to transportation of property loaded in railroad cars, of empty railroad cars, and of liquid cargoes in bulk in special tanks.

7. Applicant's operations, because of the special type and nature, have been recognized as superior to, and differing from those performed by the break-bulk lines.

8. The certificate now in effect by inadvertence erroneously describes the operations in which applicant was engaged on and since the "grandfather" date and during the interim period.

CONCLUSIONS

Upon hearing and reconsideration, we conclude that Seatrain Lines, Inc., is entitled to a certificate authorizing it to continue operations as a common carrier by water, by self-propelled vessels, in interstate or foreign commerce, in the transportation of liquid cargoes in bulk; of empty railroad cars, and of property loaded in railroad cars received from and delivered to rail carriers, and transported without transfer from the railroad cars, between the ports of New York, New Orleans, and Texas City by way of the Atlantic Ocean and the Gulf of Mexico; subject, however,

to general conditions which are necessary to carry out, with respect to the continuance of applicant's operations, the requirements of part III of the act and the orders, rules, and regulations of the Commission thereunder. In other respects the findings and conclusions of the prior report are affirmed.

The certificate and order heretofore entered in this proceeding will be superseded and cancelled, and a corrected certificate and order will be issued to conform to the record, and our findings herein.

9. In its report of February 6, 1945, the Commission, in answer to the contention that considerable expense had been incurred by plaintiff on the strength of the decision of Division 4, stated that although the proceeding had been twice set for hearing, no evidence was offered by plaintiff, consequently it found that "The record theretofore contains no specific showing in that respect".

10. On the same date as it issued its report, February 6, 1945, the Commission entered the following corrected certificate and order:

Further consideration having been had of the record in this proceeding, a hearing having been held, and the Commission on the date hereof having made and filed a report on reconsideration containing its findings of fact and conclusions thereon, which report, together with the prior report of

July 2, 1942, is hereby referred to and made a part hereof:

It is hereby certified, That public convenience and necessity require the continuance of operation by Seatrain Lines, Inc., as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of liquid cargoes in bulk; of empty railroad cars; and of property loaded in railroad cars received from and delivered to rail carriers and transported without transfer from railroad cars between the ports of New York, N. Y., New Orleans, La., and Texas City, Tex., by way of the Atlantic Ocean and the Gulf of Mexico;

It is ordered, That said carrier be, and it is hereby, authorized to perform the service specified above, subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority by this Commission.

It is further ordered, That the holding of this certificate by said carrier be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the Interstate Commerce Act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That the portion of the application seeking authority to transport passengers between New York and New Orleans be, and it is hereby, denied.

And it is further ordered, That the certificate and order issued on July 2, 1942, be, and it is hereby, superseded and cancelled as of the effective date of this corrected certificate and order; and that this corrected certificate and order shall take effect and be in force from and after May 21, 1945.

11. The effective date of the Commission's order and certificate, viz., May 21, 1945, has been voluntarily postponed until February 21, 1946.

12. On May 12, 1945, petitioner Seatrain filed its bill of complaint in this court alleging that the Commission's report and certificate of February 6, 1945, were beyond the authority of the Commission.

13. The United States filed an answer, denying the material allegations of the complaint; the Commission intervened in support of the validity of its order, and filed an answer to the same effect.

14. The proceeding was orally argued before a three-judge court, convened pursuant to statute, on July 20, 1945, and has been submitted to the court on briefs and reply briefs as well as oral argument. The entire record before the Commission was introduced in court at that time.

15. At the hearing before this court on July 20, 1945, petitioner, over objections of defendants, were permitted, subject to later ruling by the court on the objection, to introduce evidence *de novo* in court as appears from the opinion of the court, and the matter is now before this court for determination.

16. Seatrain has made substantial expenditures and commitments in reliance upon the original certificate issued by the Commission. If the order of the Commission of February 6, 1945 becomes effective Seatrain will incur large monetary losses.

Based on the foregoing findings of fact, the court makes the following:

CONCLUSIONS OF LAW

1. The court has jurisdiction of the parties and of the subject matter of this suit.

2. The motion of the defendants to strike the testimony of Mr. Brush, received on behalf of Seatrain, is denied.

3. The certificate issued by the Commission on July 2, 1942 was granted under the authority conferred upon the Commission under Section 309 (a) and 309 (d) of Part III of the Interstate Commerce Act.

4. The Commission lacked authority to enter its order of February 6, 1945 and to issue the corrected certificate pursuant thereto.

5. The order of the Commission of February 6, 1945, results in a confiscation of Seatrain's property without just compensation and without due process of law.

6. The order of the Commission of February 6, 1945, must be set aside.

For the Court:

(S) JOHN BIGGS, JR.,
United States Circuit Judge.

Dated: January 30, 1946.

In the District Court of the United States for the District of Delaware

CIVIL ACTION No. 579

SEATRAIN LINES, INC., PLAINTIFF

vs.

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

ORDER

Before the Honorable John Biggs, Jr., United States Circuit Judge, Honorable Gerald McLaughlin, United States Circuit Judge, and Honorable Paul Leahy, United States District Judge, sitting pursuant to provisions of an act of Congress known as Urgent Deficiencies Act (38 Stat. L. 220) approved October 22, 1913.

This cause came on for final hearing on the 20th day of July, 1945 on plaintiff's petition, defendants' answers, and the evidence submitted by plaintiff and defendants, and arguments for plaintiff and defendants were heard. Upon consideration thereof, all of said judges concurring, the court being fully advised in the premises, and having filed in this cause its findings of fact and conclusions of law, do find in accordance with its written opinion filed in this cause that the plaintiff is entitled to the relief prayed.

It is accordingly ordered, adjudged, and decreed by the court:

That the order of the Interstate Commerce Commission entered on the 6th day of February, 1945, in Docket No. W–543, Seatrain Lines, Inc., Common Carrier Applications, a copy of which is attached to the bill of complaint as Exhibit No. "A", be, and the same is hereby, set aside and annulled, and its enforcement perpetually enjoined.

February 6th, 1946.

(S) JOHN BIGGS, JR.,
United States Circuit Judge.

(S) GERALD MCLAUGHLIN,
United States Circuit Judge.

(S) PAUL LEAHY,
United States District Judge.

Approved (as to form):

(S) WILBUR LA ROE, JR.,
Solicitor for Plaintiff.

(S) EDWARD DUMBALD,
Special Assistant to the Attorney General, Counsel for the United States of America, defendant.

(S) DANIEL W. KNOWLTON,
General Counsel, Interstate Commerce Commission, intervening defendant.

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